IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.30330 OF 2004

Konkan Railway Corporation Ltd. ... Appellant

Vs.

Bhiku Tukaram Bharati & Anr. ... Respondents

Ms. Asha Bhambwani for the appellant.

Mr. K.K. Tated, A.G.P. for respondent 2.

CORAM: SMT. RANJANA DESAI, J.

DATED: 6TH APRIL, 2005.

P.C.:-

1. The appellant is the Konkan Railway Corporation Limited. In this first appeal, the appellant has challenged the judgment and order dated 23/10/2001 passed by the Civil Judge, Senior Division, Ratnagiri, in Land Reference No.129 of 1994. Respondent 1 is the Claimant. Respondent 2 is the Special Land Acquisition Officer, Ratnagiri.

2. An area admeasuring 53.88.00 Are was acquired by the State Government for the appellant - Konkan Railway Corporation Limited. Out of this land, an area admeasuring 01 Hector 05 Are belongs to the Claimant. Notification under section 4A of the Land Acquisition Act, 1894 (for short, "the said Act") was issued on 19/2/1992. The Special Land Acquisition Officer passed

the award on 18/10/1993. The Special Land Acquisition Officer granted compensation of Rs.30,930/-. The Claimant received the amount of compensation under protest.

3. On 13/1/1994, the Claimant filed application under section 18 of the said Act for grant of enhanced compensation and requiring the Collector to refer the matter for the determination of the court. Accordingly, the Special Land Acquisition Officer referred the matter to the Civil Judge (Senior Division), Ratnagiri, being Land Reference No.129 of 1994. The appellant - Konkan Railway Corporation Limited was not a party to the said reference.

4. On 23/10/2001, the Civil Judge, (Senior Division), Ratnagiri allowed the reference and enhanced the compensation. That judgment is under challenge in this first appeal. The appellant has also filed a civil application for leave to appeal.

5. I have heard Ms. Bhambwani, the learned counsel appearing for the appellant. She contended that the lands have been acquired for the public purpose i.e. for Konkan Railway Project. Though the Government is the acquiring body, the entire compensation amount has to be paid by the appellant. The learned counsel submitted that therefore it was incumbent upon the Claimant to make the appellant party to the reference. Inasmuch as the

appellant was not impleaded as a party to the reference, she contends that the impugned order should be set aside. In support of her submission, she relied on the Constitution Bench judgment in **U.P. Awas Evam Vikas Parishad v. Gyan Devi (dead) by LRs. and Ors., (1995) 2 SCC 326**.

6. I have also heard Mr. Tated, the learned counsel appearing for respondent 2.

7. In my opinion, the impugned order deserves to be set aside as the appellant - Konkan Railway Corporation Limited was not made party to the reference. In this connection, it will be useful to refer to the observations of the Supreme Court in **U.P. Awas Evam Vikas Parishad's case (supra)**. While dealing with the questions involving the interpretation of sub-section 2 of section 50 of the said Act the Supreme Court has observed as under.

> "(2) A local authority for whom land is being acquired has a right to participate in the acquisition proceedings in the matter of determination of the amount of compensation while they are pending before the Collector and to adduce evidence in the said proceedings. While it is precluded from seeking a reference against the award of the Collector it can defend the award

and oppose the enhancement of the amount of compensation sought before the reference court by the person interested in the land. Moreover, the local authority has a right to appear and adduce evidence before the reference court. The presence of the local authority is necessary for the decision of the question involved in the proceedings before the reference court and it is a proper party in the proceedings. The local authority is, therefore, entitled to be impleaded as a party in the proceedings before the reference court."

8. Similar view has been taken by the Supreme Court in **M/s. Neyvely Lignite Corpn. Ltd. vs. Spl. Tahsildar (Land Acquisition), Neyvely, AIR 1995 SC 1004**. The observations of the Supreme Court may be quoted.

"The beneficiary, i.e. local authority or company a co-op. society, registered under the relevant state law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. The beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled

to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the Court and file the appeal agaisnt the enhanced award and decree of the Civil Court under Section 26 or of the judgment and decree under Section 54 or is entitled to file writ petition under Art. 226 and assail its legality or correctness. When the award made under Section 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the settled law that the conduct of the Collector or Civil Judge is amenable to disciplinary enquiry and appropriate action. These are very valuable and salutary rights. Moreover, in the language of Order 1 Rule 10, C.P.C. in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1, Rule 10, C.P.C. The denial of the right to a person interested is in negation of fair and just

procedure offending Art. 14 of the Constitution."

9. In **Abdul Rasak and others v. Kerala Water Authority and Ors, (2002) 3 SCC 228**, the same view has been reiterated. In **Konkan Railway Corpration Ltd. v. Shri Sonu Laxman Harekar & Ors.** [Firat Appeal (St.) No.16362 of 2002], the Division Bench of this court has also taken a similar view.

10. The appellant has been granted leave to appeal by me. In view of the law enunciated by the Supreme Court in the above cases, impugned judgment and order dated 23/10/2001 passed by the Civil Judge, (Senior Division), Ratnagiri in Land Reference No.129 of 1994 is set aside and the matter is remanded to the Civil Judge, (Senior Division), Ratnagiri. The appellant shall suo-moto appear before the Civil Judge, Senior Division, Ratnagiri on 6/6/2005 and shall file a written statement. After filing the written statement, the Civil Judge, (Senior Division), Ratnagiri, shall recast the issues within a period of one week. One week's time shall be granted to both sides to place list of witnesses and, thereafter, within one week the matter shall be listed for final hearing. At the final hearing, it will be open for the respondents to lead evidence of the additional witnesses. It will be equally open for the appellant to cross-examine the respondents' witnesses and the respondents (the witnesses examined earlier and the

witnesses examined later). Thereafter, it will be open for the appellants to lead their evidence and, thereafter, the matter will be closed. After closure of the matter, within a period of 15 days, arguments shall be heard by the Civil Judge, (Senior Division), Ratnagiri, and within a period of one week thereafter, the judgment shall be delivered. This schedule shall be strictly followed by all the parties and the Civil Judge, and the parties are directed to co-operate with the Civil Judge, (Senior Division), Ratnagiri.

11. I find it appropriate to direct the appellant to deposit amount of 50% enhanced compensation including the solatium, component and interest as directed in the order dated 23/10/2001 by the Civil Judge, (Senior Division), Ratnagiri. The said amount shall be deposited within three weeks from today in the court of Civil Judge, (Senior Division), Ratnagiri. On deposit of such amount, the Civil Judge, (Senior Division), shall release 50% of the said deposited amount in favour of the respondent/Claimant without any surety and if the respondent/Claimant tender a solvent surety in respect of rest of the 50%, the same shall be released in favour of respondent 1. Costs costs in cause.

12. All contentions of the parties are kept open.

13. Appeal is disposed of in the aforestated terms.

14. All connected civil applications stand disposed of.

15. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)